

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

NIKITA WOODS,

Plaintiff,

vs.

DEPARTMENT OF CHILD AND
FAMILY SERVICES, TERRENCE
LYNCH, SARAH GROTBO, MARY
GETTEL, MARY JO JEFFRIES,
ANGELA MYERS, and LARRY
LAFONTAIN,

Defendants.

CV 15-04-GF-BMM

AMENDED

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS OF UNITED
STATES MAGISTRATE JUDGE**

Plaintiff Nikita Woods filed a Complaint on January 7, 2014. (Doc. 2.) Woods proceeds in forma pauperis. Woods alleges that Defendants illegally took her son and daughter from her. The Court previously dismissed Woods's original Complaint for failure to state a claim. Woods filed an Amended Complaint on May 20, 2015. (Doc. 6.)

United States Magistrate Judge John Johnston entered Findings and Recommendations in this matter on July 27, 2015. (Doc. 8.) Judge Johnston reviewed Woods's Amended Complaint pursuant to 28 U.S.C. § 1915(e)(2), and

recommended that this Court dismiss her claims against Defendants Lynch, Jeffries, and M[e]yers because they were not acting under color of state law. Judge Johnston also recommended that this Court dismiss Woods's claims against the Department of Child and Family Services and Judge Macek as they enjoy immunity from suit. The Magistrate Judge found that Woods failed to state a claim against Defendant Lafontain and recommended that the claims against him should also be dismissed. The unlawful arrest claim against Officers Halloran and Klundt¹ is time barred and Judge Johnston recommended that it be dismissed as well. Finally, Judge Johnston recommended that the remaining Defendants respond to Woods's slander and due process claims. (Doc. 8.)

Woods timely filed objections to Judge Johnston's Findings and Recommendations on August 4, 2015. (Doc. 10.) The Court reviews de novo Findings and Recommendations to which objections are made. 28 U.S.C. § 636(b)(1). The Court will review for clear error the portions of the findings and recommendations to which no party specifically objected. *McDonnell Douglas Corp. v. Commodore Bus. Mach. Inc.*, 656 F.2d 1309, 1313 (9th Cir.1981). "Where a [party's] objections constitute perfunctory responses argued in an attempt to engage the district court in a rehashing of the same arguments set forth in the original [complaint], the applicable portions of the findings and recommendations

¹ Woods improperly refers to the Officers as Officers Halloram and Klunt.

will be reviewed for clear error." *Rosling v. Kirkegard*, 2014 WL 693315 *3 (D. Mont. Feb. 21, 2014) (internal citations omitted).

Woods raises several objections to the Findings and Recommendations. (Doc. 10.) Many objections attempt to make factual corrections that do not affect the legal outcome. *Id.* After reviewing Woods's objections, the Court finds that her objections lack merit and simply restate the allegations made in the Amended Complaint. (Doc. 6.)

The Court agrees with Judge Johnston's recommendation that Defendants Gettel, Clark, and Grotbo must respond to Woods's slander and due process claims.

This Court finds no clear error in Judge Johnston's Findings and Recommendations and adopts them in full.

IT IS HEREBY ORDERED:

1. Plaintiff's claims on behalf of her mother and Mr. James Dean Bird, Jr. are **DISMISSED** with prejudice.
2. Plaintiff's claims against Defendants Lynch, Jeffries, and M[e]yers are **DISMISSED** with prejudice.
3. The Department of Child and Family Services and Judge Macek are immune from suit and Plaintiff's claims against them are **DISMISSED** with prejudice.

4. Plaintiff's claims against Defendant Lafontain are **DISMISSED** with prejudice.

5. Defendants Gettel, Clark, and Grotbo are **ORDERED** to respond to Plaintiff's slander and due process claims.

6. The Clerk of Court shall have the docket reflect that the Court certifies pursuant to Federal Rule of Appellate Procedure 24(a)(3)(A) that any appeal of this decision would not be taken in good faith.

7. The Clerk is directed to enter judgment accordingly.

DATED this 29th day of September, 2015.

A handwritten signature in blue ink that reads "Brian Morris". The signature is fluid and cursive, with "Brian" on top and "Morris" on the bottom, both starting with a capital letter.

Brian Morris
United States District Court Judge